



LETTER ABOUT LLC OPERATIONS

Dear Client (Members):

I have enjoyed working with you in organizing your new limited liability company. This letter will provide you with some important guidelines for operating the LLC. As we have discussed, doing business in the form of an LLC provides limited liability for all members and advantageous partnership treatment for federal income tax purposes. This combination of benefits is not available with any other form of business entity, and you will need to follow certain guidelines to be sure they remain available.

1. Separate Entity

It is most important that you keep in mind is that your LLC is a business entity separate from its members. If an LLC is operated as the alter ego of its members, creditors of the LLC may be able to recover their claims from the members, thus eliminating the advantage of limited liability. In some cases, the existence of the LLC might be disregarded for tax purposes, which may upset your plans for sharing its income and losses.

a. Adequate Assets

In order to function as a separate entity, an LLC needs sufficient assets to operate its business. When your LLC is organized, you should contribute enough cash and other assets to provide the LLC with a reasonable chance of being successful. Ownership of the cash and assets must be transferred to the LLC--the LLC should not be operated primarily on money borrowed or assets rented from members.

If your LLC is funded sufficiently when organized, you need not contribute additional assets. But the adequacy of its assets should not be jeopardized by distributions made to members. As a general rule, no distributions should be made to members until your LLC has accumulated sufficient profits to fund the distributions. State law prohibits an LLC from making any distribution that would cause its liabilities to exceed its assets or would prevent it from paying its obligations as they become due in the ordinary course of business. These insolvency restrictions are designed to protect an LLC's creditors, and creditors can force members to return distributions that violate these restrictions to the LLC so that they are available for the payment of claims. The insolvency restrictions apply to distributions that are required under the terms of the operating agreement, such as those for the payment of taxes, as well as discretionary distributions.



b. Separate Assets

As a separate entity, your LLC needs to have its own assets. The LLC must have a separate bank account and title to its other assets should be in the LLC's name. Under no circumstances should the personal funds, assets, or accounts of members be mixed with those of the LLC. Similarly, LLC funds should never be used to pay personal expenses of members, to make personal investments for members, or for any other purposes not related to the LLC's business.

The LLC's cash or other assets can be transferred to members only in limited circumstances. While your LLC is actively engaged in business, transfers should only be made to members in three situations: (a) to make distributions permitted under the terms of the operating agreement and state law insolvency restrictions; (b) to reimburse members for reasonable expenses incurred on behalf of the LLC; and (c) to pay reasonable compensation for services performed by members for the LLC, the amount of which has been agreed upon in advance. You should note that reimbursement of unreasonable expenses and payment of unreasonable compensation may be treated as a distribution subject to the insolvency restrictions.

Members can lease property or loan money to the LLC, but appropriate arrangements should be made and documented. For example, if a member rents an office, production facility, or warehouse to the LLC, there should be a written lease, and the terms should be fair to the LLC. It is a good idea to document loans from members to the LLC with promissory notes and to provide for a reasonable rate of interest that is actually paid.

c. Separate Operations

An LLC must be operated as an entity that is separate from its members. The business of your LLC should be conducted in the name of the LLC, and the LLC's name should be used on all agreements, contracts, leases, orders, and other arrangements entered into by the LLC. This name should also be used on all products, signs, advertisements, correspondence, business cards, telephone directory listings, and similar items.

The LLC will need to obtain and carry its own insurance and to file its own income and employment tax returns. You should contact your certified public accountant about filing of an application for an employer identification number for the LLC and for assistance with setting up appropriate books and records of the LLC.

An LLC can only act through its members. But when one of you acts for your LLC, remember that you are an agent of the LLC and not an individual. For example, a member should sign all documents on behalf of the LLC as follows: “[*name of company*] by [*name of member*], Member.” This makes it clear that the member is signing in a representative capacity and is not accepting personal responsibility for the performance of the obligations created by the document.



BLACK WALL STREET
BLACKWALLSTREET.COM

Because Black Wealth Is Critical to Black Power™

LLCs exist under state law. Your LLC was created by filing articles of organization with the secretary of state of this state, and the filing will remain effective only if the LLC files annual reports with the state and pays any fees or taxes due with those reports. Failing to file annual reports or pay fees or taxes can lead to dissolution of an LLC, resulting in the members' loss of the protections afforded by limited liability.

2. Taxes

Your LLC will be treated as a partnership for federal income tax purposes unless it elects to be taxed as a corporation. Making such an election can have significant adverse tax consequences, and you should not make the election without carefully reviewing the ramifications with your certified public accountant. I strongly recommend that you do this even if you plan to make an election to have your LLC taxed as an S corporation.

As an entity taxed as a partnership, your LLC does not pay income tax. However, it must file a federal information income tax return each year, and any income or loss passes through to the members and must be reported on their individual income tax returns. Your LLC may also be required to file income tax returns in states and localities in which it operates. Although not subject to income tax, your LLC will be required to pay employment taxes if it has employees.

You should consult with your certified public accountant regarding compliance with applicable tax reporting and payment requirements.

Even though it is taxed as a partnership, your LLC should not be held out to the public as a partnership. An LLC provides limited liability to its members whereas a partnership does not. If members of an LLC identify themselves as partners, there is a risk that third parties dealing with the LLC will seek to assert their claims against the members individually.

3. Operating Agreement

Your LLC's operating agreement provides a road map for conducting its operations in a manner that preserves the benefits of this form of doing business. It also defines your relationships with one another. You should refer to the operating agreement periodically to be certain that your LLC's operations are being conducted properly.

Members holding a majority of ownership interests can make most management decisions, but unless there is general agreement on an issue, it may be best to hold a formal meeting. Although LLCs are not required to hold annual meetings, many find it useful for the members to meet regularly to review LLC operations coordinate their visions of where the business should be headed.

Minutes should be kept for all member meetings. They should indicate who was present, what action was taken, and which members voted in favor of or against each matter. The minutes should



BLACK WALL STREET
BLACKWALLSTREET.COM

Because Black Wealth Is Critical to Black Power™

be kept at the principal office of the LLC. The operating agreement contains a list of the other types of records and information that must be maintained at that location.

Some decisions require unanimous consent. These include changing the nature of the LLC's business, making an optional distribution to members, selling all or a substantial part of the LLC's assets, entering into a transaction involving a conflict of interest between the LLC and a member, admitting a new member, and continuing the LLC following the termination of a member's association with the LLC. Decisions on these matters must be documented in writing and made a part of the LLC's records.

The operating agreement contains restrictions on the transfer of members' interests and requirements for the admission of new members. Members are required to follow a specific process if they want to transfer their interests to others, and formal action by the members is required to admit new members to the LLC. These provisions are designed to prevent creditors of members or other third parties from acquiring interests in the LLC.

The operating agreement also contains provisions relating to the death, incapacity, withdrawal, expulsion, bankruptcy, or dissolution of a member. These provisions should be consulted if any of these events occur. Prompt action may be required to continue the operation of the LLC.

4. Further Advice

Neither this letter nor your LLC's operating agreement can anticipate all issues that may arise. Accordingly, I encourage you to seek further legal advice when you have questions and particularly before undertaking major changes or transactions affecting the LLC.

Thank you for the opportunity to be of service to you. I look forward to the possibility of working with you in the future.

Sincerely,

Marye Dean, Esq.
Marye Dean, Esq.